



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 18, 2015

Ms. June Harden  
Assistant Attorney General  
Public Information Coordinator's Office  
General Counsel Division  
Office of the Attorney General  
Post Office Box 12548  
Austin, Texas 78711-2548

OR2015-12137

Dear Ms. Harden:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. This request was originally received by the Open Records Division of this office and assigned ID# 571730. Preparation of the ruling has been assigned to the Opinion Committee.

The Office of the Attorney General (the "OAG") received a public information request for "a complete copy of all data for ID560033/OR2015-07263 by AAG Kristi L. Godden." You indicate that you have released some of the requested information but claim the requested information submitted in Exhibit B is excepted from disclosure under Government Code sections 552.107 and 552.111. We have considered the exceptions you claim and reviewed the information you have submitted in Exhibit B.

Section 552.107(1) of the Government Code protects information that comes within the attorney-client privilege. TEX. GOV'T CODE ANN. § 552.107(1) (West 2012). When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. Tex. Att'y Gen. ORD-676 (2002) at 6?7. First, a governmental body must demonstrate "the information constitutes or documents a communication." *Id.* at 7. Second, the communication must have been made for the purpose of facilitating "the rendition of professional legal services to the client" governmental body. TEX. R.

EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *See In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding), *mand. denied*, 12 S.W.3d 807 (Tex. 2000) (stating that the attorney-client “privilege does not apply if the attorney is acting in a capacity other than that of an attorney”). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, lawyer representatives, and a lawyer “representing another party in a pending action” and “concern[ing] a matter of common interest” therein. TEX. R. EVID. 503(b)(1)(A)-(C). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a confidential communication, *id.* 503(b)(1), meaning it was “not intended to be disclosed to third persons other than those . . . to whom disclosure is made to further the rendition of professional legal services to the client [or those] reasonably necessary to transmit the communication.” *Id.* 503(a)(5).

Whether a communication meets this definition depends on the intent of the parties involved at the time the information was communicated. *See Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, orig. proceeding [mand. denied]) (stating that “the issue of confidentiality focuses on the intent of the parties at the time the communications are made”). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (orig. proceeding) (recognizing that the privilege extends to the “entire communication, including facts contained therein”).

You state that the submitted information in Exhibit B consists of or reveals communications between and among ORD attorneys and staff and includes emails between ORD attorneys, internal ORD tracking sheets, and a draft of an ORD ruling. You further state that the tracking sheets are part of the communications between attorneys and are used in the process of drafting, reviewing, editing, and revising draft letter rulings before their issuance in final form and are used by the ORD attorneys to communicate their legal advice and opinions. You also state that all of the documents within Exhibit B constitute or reveal communications between privileged parties that were made for the purpose of providing professional legal services. And you state that these communications were not intended to be disclosed and that they have not been disclosed to non-privileged parties. Based on your representations and our review, we conclude that the information you have provided

under Exhibit B is subject to the attorney-client privilege and may be withheld under section 552.107(1) of the Government Code.<sup>1</sup>

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Charlotte M. Harper  
Assistant Attorney General  
Opinion Committee

CMH/sdk

Ref: ID# 571730

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup>As our ruling for this information is dispositive, we need not address your remaining argument against disclosure for this information.